

Introduced by Senator Margett

February 23, 2001

An act to amend Section 4104.5 of, to add Sections 9204 and 9205 to, and to repeal Chapter 10 (commencing with Section 19100) of Part 2 of Division 2 of, the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 937, as introduced, Margett. Public contracts: bids and disputes.

The Subletting and Subcontracting Fair Practices Act requires a public entity taking bids for construction of a public work or improvement to establish a date for submission of bids by prime contractors. Existing law applicable to local agencies requires that any bids that are submitted after the bid submittal deadline must be returned unopened to the bidder.

This bill would recast the provisions governing notice of bid submittal deadlines, and would also apply to state agencies the requirement that postdeadline bids be returned unopened.

The State Contract Act contains provisions governing the resolution of disputes between contractors and state agencies, including establishing a statute of limitations for damages on a contract with the state and recognizing a cause for the 2nd lowest bidder on a contract, if the successful bidder violated provisions governing workers' compensation and unemployment insurance.

This bill would revise these provisions so that they are applicable to all contracts subject to the Public Contract Code, including those involving local agencies.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4104.5 of the Public Contract Code is
2 amended to read:

3 4104.5. (a) The officer, department, board, or commission
4 taking bids for construction of any public work or improvement
5 shall ~~set forth in the bid invitation a date and time for closing of~~
6 ~~submission of bids by prime contractors~~ *specify in the bid*
7 *invitation and public notice the place the bids of the prime*
8 *contractors are to be received and the time by which they shall be*
9 *received.* The date and time shall be extended by no less than 72
10 hours ~~in the event~~ if the officer, department, board, or commission
11 issues any material changes, additions, or deletions to the
12 invitation later than 72 hours prior to the bid closing. *Any bids*
13 *received after the time specified in the notice or any extension due*
14 *to material changes shall be returned unopened.*

15 (b) As used in this section, the term “material change” means
16 a change with a substantial cost impact on the total bid as
17 determined by the awarding agency.

18 (c) As used in this section, the term “bid invitation” shall
19 include any documents issued to prime contractors that contain
20 descriptions of the work to be bid or the content, form, or manner
21 of submission of bids by bidders.

22 SEC. 2. Section 9204 is added to the Public Contract Code, to
23 read:

24 9204. (a) Presentation of a claim pursuant to Part 3
25 (commencing with Section 900) of Division 3.6 of Title 1 of the
26 Government Code is not required to commence a legal action or
27 arbitration proceeding for money or damages on a contract with a
28 public entity, but any action or proceeding shall be commenced not
29 later than six months after either of the following:

30 (1) The contracting public entity’s final written decision under
31 contract claim provisions.

32 (2) The accrual of the cause of action, if there are no contract
33 claim provisions.

34 (b) Nothing contained in this section may be construed as
35 modifying or affecting the provisions of Article 8.1 (commencing



1 with Section 14410) of Chapter 3 of Part 5 of Division 3 of Title
2 of the Government Code.

3 SEC. 3. Section 9205 is added to the Public Contract Code, to
4 read:

5 9205. (a) (1) The second lowest bidder, and any person,
6 firm, association, trust, partnership, labor organization,
7 corporation, or other legal entity that has, prior to the letting of the
8 bids on the public works project in question, entered into a contract
9 with the second lowest bidder, may bring an action in superior
10 court if that entity suffers damages as a result of the bid of the
11 second lowest bidder for any contract subject to this part not being
12 accepted due to the successful bidder's violation, as evidenced by
13 the conviction of the successful bidder therefor, of any provision
14 of Division 4 (commencing with Section 3200) of the Labor Code
15 or of the Unemployment Insurance Code, or of both.

16 (2) There is a rebuttable presumption that a successful bidder
17 who has been convicted of a violation of any provision of Division
18 4 (commencing with Section 3200) of the Labor Code or of the
19 Unemployment Insurance Code, or of both, was awarded the bid
20 because that successful bidder was able to lower the bid due to this
21 violation or these violations occurring on the contract for public
22 work awarded by the public entity.

23 (b) In an action brought pursuant to this section, the court may
24 award costs and reasonable attorney's fees, in an amount to be
25 determined in the court's discretion, to the prevailing party.

26 (c) For purposes of an action brought pursuant to this section:

27 (1) Employee status shall be determined pursuant to Division
28 4 (commencing with Section 3200) of the Labor Code with respect
29 to alleged violations of that division, pursuant to the
30 Unemployment Insurance Code with respect to alleged violations
31 of that code, or pursuant to Section 2750.5 of the Labor Code with
32 respect to alleged violations of either Division 4 (commencing
33 with Section 3200) or of the Unemployment Insurance Code, or
34 of both.

35 (2) "Second lowest bidder" means the second lowest qualified
36 bidder deemed responsive by the public entity awarding the
37 contract for public work.

38 (3) The "second lowest bidder" and the "successful bidder"
39 may include any person, firm, association, corporation, or other
40 legal entity.

1 (d) A second lowest bidder who has been convicted of a
2 violation of any provision of Division 4 (commencing with
3 Section 3200) of the Labor Code or of the Unemployment
4 Insurance Code, or both, within one year prior to filing the bid for
5 public work, and who has failed to take affirmative steps to correct
6 that violation or those violations, is prohibited from bringing any
7 action authorized by this section.

8 SEC. 4. Chapter 10 (commencing with Section 19100) of Part
9 2 of Division 2 of the Public Contract Code is repealed.

